

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONYA LYNN LOSSING,

Defendant-Appellant.

UNPUBLISHED

September 24, 1996

No. 183404

LC No. 94-005247-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded nolo contendere to manslaughter with a motor vehicle, MCL 750.321; MSA 28.553, and was sentenced to seven to fifteen years' imprisonment. She appeals as of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

The trial court did not abuse its discretion in denying defendant's post-sentencing motion for plea withdrawal. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). The court did not err in finding that trial counsel's statement regarding sentencing could not be fairly interpreted as a promise of leniency. *People v Arnold*, 48 Mich App 22, 30; 209 NW2d 818 (1973). In addition, there was no record support for defendant's allegation that a misunderstanding of the law on the part of trial counsel induced her plea.

Defendant has failed to preserve the issue of whether she was denied effective assistance of counsel because trial counsel allegedly misunderstood the law and failed to prepare for trial. *People v Armendarez*, 188 Mich App 61, 74; 468 NW2d 893 (1991). In any event, there is no record support for defendant's allegations.

The trial court did not abuse its discretion in the scoring of defendant's sentencing guidelines. *People v Daniels*, 192 Mich App 658, 674; 482 NW2d 176 (1991); *People v Reddish*, 181 Mich

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

App 625, 628; 450 NW2d 16 (1989). Uncontroverted evidence contained in the presentence investigation report and testimony in the preliminary examination, together with evidence supplied by the prosecutor, support the trial court's scoring decision. *People v Randolph Warner*, 190 Mich App 26, 28; 475 NW2d 397 (1991). Contrary to defendant's assertion, the prosecutor did provide documentary evidence that defendant was on probation at the time this accident occurred and that she either waived counsel or was represented by counsel for her misdemeanor convictions. As a result, the score of fifteen points for Prior Record Variable 6 is well supported.

In addition, the score of ten points for Offense Variable 3 is supported by the record. Such a score can be given if there is proof of gross negligence. In this case defendant was driving in the dark or dawn hours without headlights at a high rate of speed when she crossed the centerline of the highway and hit two vehicles, killing the driver of one of them. The fact that defendant initially attempted to claim that someone else was driving the car indicates her awareness of the seriousness of her actions.

Defendant's argument that she was denied meaningful allocution must fail. Defendant was asked specifically and separately whether she wished to say anything, and she declined. The trial court complied with MCR 6.425(D)(2)(C). *People v Berry*, 409 Mich 774, 781; 298 NW2d 434 (1980); *People v Westbrook*, 188 Mich App 615, 617; 470 NW2d 495 (1991). The trial court was under no obligation to inform defendant of its decision to depart from the sentence recommendation of the probation department before asking her if she had anything to say. *People v Shuler*, 188 Mich App 548, 552; 470 NW2d 492 (1991).

Defendant's sentence does not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Defendant has failed to rebut the presumption that her sentence, which is within the recommended guidelines' range, is proportionate. *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995); *People v Sharp*, 192 Mich App 501, 505-506; 481 NW2d 773 (1992).

Affirmed.

/s/ John H. Gillis
/s/ Glenn S. Allen, Jr.
/s/ Joseph B. Sullivan